

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORDER

On June 24, 2008, Defendant Frederick H. Banks ("defendant") filed a "Motion for New Trial Based on Newly Discovered Evidence," Docket No. 557 ("Motion.") In the Motion, defendant argues that when he sought to introduce exculpatory evidence at his trial in this matter - specifically a 1998 BMW vehicle ("BMW") he had allegedly used during the "sting operation" which ultimately led to his arrest for mail fraud - the court was informed by an Assistant U.S. Attorney that the vehicle had been sold by the United States Marshals Service. When defendant sought return of the BMW in the context of another criminal matter, he, however, was informed by a different Assistant U.S. Attorney that the vehicle was still in the government's possession.

Defendant now contends that "this newly discovered evidence requires that Bank's [sic] be granted a new trial in this matter and Bank's [sic] was prejudiced because the withheld evidence violated his substantive due process and right to a fair trial under the Fifth and Sixth Amendments." (Motion at 1.) He further argues that the government violated the precepts of United States

v. Brady, 397 U.S. 742 (1970), and the Jencks Act¹ by withholding the vehicle and, had he been able to present this evidence at trial, a different outcome may have resulted. (Id. at 1-2.)

The government responds (Docket No. 558) that the court should hold this pleading in abeyance pending the outcome of defendant's appeal of his trial and conviction to the United States Court of Appeals for the Third Circuit. The court agrees that defendant's appeal divested the court of jurisdiction over the Motion.

Defendant's Motion at Docket No. 557 is **DENIED WITHOUT PREJUDICE** and may be reconsidered, if appropriate, following resolution of defendant's pending appeal.

July 28, 2008

/s/ JOY FLOWERS CONTI

Joy Flowers Conti
United States District Judge

cc: Counsel of record

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¹ See 18 U.S.C. § 3500.